

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
MICHAEL THOMAS CONRICK**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD74061

DATE: September 4, 2012

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Appeal From:

Daviess County Circuit Court  
The Honorable Daren L. Adkins, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

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Attorneys:

John W. Grantham, Jefferson City, MO, for respondent.

Amy M. Bartholow, Columbia, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**MICHAEL THOMAS CONRICK,**

**APPELLANT.**

No. WD74061

Daviess County

Before Division Three: Victor C. Howard, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Michael Conrick appeals from his conviction following a jury trial of first-degree robbery and armed criminal action. Conrick argues that the trial court erred in overruling a motion to suppress and in overruling objections at trial regarding the admission of out-of-court and in-court identifications of Conrick by the robbery victim and a witness on the grounds that the identifications were the result of unduly suggestive police procedures.

**AFFIRMED**

Division Three holds:

1. Appellate courts will reverse a ruling on a motion to suppress only if it is clearly erroneous and will reverse admission of testimony only if the trial court abused its discretion.

2. In determining whether pretrial identification of a defendant is admissible, a trial court must engage in a two-step analysis. The first step requires the court to determine whether the pretrial identification (here a photo lineup) was unduly suggestive. If so, and only if so, the second step requires the court to determine the impact of the suggestive procedure on the reliability of the identification.

3. The trial court did not clearly err in denying Conrick's motion to suppress a photo lineup. A lineup is not impermissibly suggestive simply because the individuals in the lineup have different physical characteristics.

4. Similarly, the trial court did not abuse its discretion in overruling objections at trial regarding the admissibility of the photo lineup and in-court identifications argued by Conrick to have been tainted by the photo lineup. Conrick did not sustain his burden to establish the first step to securing exclusion of a pretrial identification--that the photo lineup was unduly suggestive. The trial court was thus permitted to admit pretrial identifications and any subsequent in-court identifications without considering whether the suggestive procedures created a substantial likelihood that the identification was unreliable -- the second step to securing exclusion of a pretrial identification.

5. Nothing prevented Conrick from independently arguing that the pretrial and in-court identifications were not reliable -- a credibility determination for the jury to make. Absent a showing of police suggestiveness, questions as to the reliability of the evidence or the witness go to the weight of the evidence.

Opinion by Cynthia L. Martin, Judge

September 4, 2012

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